

REMARKS

Claims 1-20 are pending in the current application. Claim 1 has been amended and new claims 14-20 have been added hereby.

The Examiner has rejected claims 1, 2 and 7 under 35 U.S.C. § 102(b) as being anticipated by Metral (French Patent No. 2,291,106). Claim 1, and claims 2-13 which depend therefrom, all call for a plastic film bag assembly that includes, *inter alia*, a severance line extending across a header portion whereat the bag is selectively severable from the header portion, the severance line includes a bag support section and a tear section wherein the severance line support section has a first strength per unit length of severance line requiring a positive force to sever the bag from the header portion along the severance line support section and the tear section has a second strength per unit length of severance line requiring a positive force to sever the bag from the header portion along the severance line tear section and wherein the first strength per unit length is greater than the second strength per unit length whereby, when severing the bag from the header along the severance line, a greater force is required for severing along the support section than the force required for severing along the tear section.

In rejecting claims 1, 2 and 7 based upon Metral '106, the Examiner equates a slit in the bag disclosed by Metral '106 to the severance line tear section called for in claim 1 of the present application. Claim 1 has been amended hereby to clarify that the tear section has a strength per unit length of severance line which requires a force to sever the severance line along tear section. More specifically, claim 1 now calls for the tear section to have "a second strength per unit length of severance line requiring a positive force to sever said bag from said header portion along said severance line tear section". A slit extending completely through a bag would not have any strength per unit length and would not require a positive force to sever the bag from the header portion along the slit. Nor would the use of a slit teach or suggest the use of such a tear section which has a strength and requires the use of a positive force to sever the bag from the header portion along the tear section. Thus, Metral '106 does not anticipate claim 1, or claims 2 and 7 which depend therefrom, and the withdrawal of the rejection under 35 U.S.C. § 102(b) based upon Metral '106 is respectfully requested.

The Examiner has rejected claims 1, 2, 3 and 7 under 35 U.S.C. § 102(b) as being anticipated by Membrino (U.S. Patent No. 3,353,661). In this rejection, the Examiner similarly equates slits in the bags disclosed by Membrino '661 as being equivalent to the severance line

tear section called for in claim 1 of the present application. As discussed above with reference to the Metral '106 reference, the use of a slit does not disclose or suggest a severance line tear section as called for in claim 1 of the present application. Thus, the withdrawal of the Examiner's rejection of claims 1, 2, 3 and 7 based upon Membrino '661 is respectfully requested.

The Examiner has also rejected claims 1, 2 and 7 under 35 U.S.C. § 102(e) as being anticipated by DeSmedt (U.S. Patent No. 6,601,707). It is first noted that the present application is a divisional application that claims priority from U.S. Patent Application Serial No. 09/859,079 filed on May 16, 2001 (now U.S. Patent No. 6,718, 738). The DeSmedt '707 patent issued from an application that was filed on February 16, 2001, less than one year before the priority date of May 16, 2001 for the present application. A DECLARATION OF DAVID C. HUSEMAN UNDER 37 CFR 1.131 is enclosed herewith and demonstrates that subject matter claimed in the present application was invented by the applicant prior to the February 16, 2001 filing date of the application resulting in U.S. Patent No. 6,718,738 and thereby removing U.S. Patent No. 6,718,738 as an effective reference under 35 U.S.C. § 102(e) with regard to the present application.

More specifically, it is noted that David C. Huseman, the sole inventor of the present application, has declared that he conceived and reduced to practice a prototype plastic film bag assembly (the "PROTOTYPE FILM BAG ASSEMBLY") by at least as early as October 10, 2000, within the United States. See DECLARATION OF DAVID C. HUSEMAN UNDER 37 CFR 1.131, para. 2. As further set forth in the attached Declaration:

The PROTOTYPE BAG ASSEMBLY included a plastic film bag having front and back walls defining a cavity therebetween and an opening leading to the cavity. The PROTOTYPE BAG ASSEMBLY also included a header portion extending from the back wall whereby the bag could be supported. A severance line extended across the header portion of the PROTOTYPE BAG ASSEMBLY and allowed the bag to selectively severed from the header portion along the severance line. The severance line includes both a bag support section and a tear section wherein the severance line support section has a first strength per unit length of severance line requiring a positive force to sever the bag from the header portion along the severance line support section and the tear section has a second strength per unit length of severance line requiring a positive force to sever the bag from the header portion along the

severance line tear section with the first strength per unit length being greater than the second strength per unit length whereby, when severing the bag from the header along the severance line, a greater force was required for severing along the support section than the force required for severing along the tear section.

See DECLARATION OF DAVID C. HUSEMAN UNDER 37 CFR 1.131, para. 3. A sketch providing demonstrable evidence of these facts is attached to the Declaration and described in paragraphs 7 and 8 of the Declaration. Thus, the attached DECLARATION OF DAVID C. HUSEMAN UNDER RULE 1.131 clearly demonstrates that the inventor of the present application had conceived and reduced to practice the invention called for in the claim 1 of the present application by at least as early as October 10, 2000. The attached Declaration also demonstrates that the bag assembly reduced to practice by October 10, 2000, also included a plurality of holes in one of the back or front walls, complementary zipper profiles and gusset called for in dependent claims of the present application. The DeSmedt '707 has a filing date of February 16, 2001 and, thus, fails to qualify as prior art under 35 U.S.C. § 102(e) with respect to invention claimed in the present application. Thus, the withdrawal of the Examiner's rejection of claims 1, 2 and 7 under 35 U.S.C. § 102(e) based upon DeSmedt '707 is respectfully requested.

The Examiner has asserted three rejections under 35 U.S.C. § 103(a). First, the Examiner acknowledges that neither Metral '106, Membrino '661, nor DeSmedt '707, disclose a bag assembly having complementary detachably attachable zipper profiles. The Examiner rejects claims 4, 8 and 11 under § 103(a) arguing that it would be obvious to combine such zipper profiles with the bag assemblies disclosed by these references.

Second, the Examiner acknowledges that neither Metral '106, Membrino '661, nor DeSmedt '707, disclose a bag assembly wherein at least one of the front and back walls has a plurality of holes. The Examiner rejects claims 5, 9, 10 and 12 under § 103(a) arguing that it would be obvious to provide one of the front and back walls of the bag assemblies disclosed by these references with a plurality of holes.

Third, the Examiner acknowledges that neither Metral '106, Membrino '661, nor DeSmedt '707, disclose a bag assembly having a gusset formed between a front and back wall of the bag assembly. The Examiner rejects claims 6 and 13 under § 103(a) arguing that it would be obvious to provide such a gusset with the bag assemblies disclosed by these references.

As discussed above, the DeSmedt '707 patent fails to qualify as prior art under 35 U.S.C.

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§ 102(e) with respect to the present invention and, thus, cannot be used in asserting a rejection under 35 U.S.C. § 103(a). As also discussed above, the slits disclosed by Metral '106 and Membrino '661 do not disclose or suggest the severance line tear section called for in claim 1 of the present application and the rejections asserted by the Examiner under § 103(a) fail to rectify this deficiency. Thus, claims 4-6, 8-11 and 13 are patentably distinct over Metral '106 and Membrino '661 for the reasons set forth above with respect to claim 1 and the withdrawal of the Examiner's rejections under 35 U.S.C. § 103(a) of claims 4-6, 8-11 and 13 is respectfully requested.

New claims 14-20 have been added hereby and all call for a bag assembly that includes, *inter alia*, a severance line including a bag support section and a tear section wherein the severance line support section has a first strength per unit length of severance line requiring a positive force to sever the bag from the header portion along the severance line support section and the tear section has a second strength per unit length of severance line requiring a positive force to sever the bag from the header portion along the severance line tear section wherein the first strength per unit length is greater than the second strength per unit length whereby, when severing the bag from the header along the severance line, a greater force is required for severing along the support section than the force required for severing along the tear section. Thus, it is respectfully submitted that claims 14-20 are allowable for the reasons set forth above with respect to claim 1.

Furthermore, it is noted that claims 14-20 also call for the plastic film bag assembly to include complementary detachably attachable zipper profiles for opening and closing the bag. With regard to the use of such zipper profiles with plastic film bag assemblies, it is noted that placing such bag assemblies in a stack will generally result in the engagement of the zipper profiles and closure of the bag opening and that such bags must typically be opened by the pulling apart of the opposing bag walls instead of employing a burst of air. Thus, it is respectfully submitted that it is not obvious to combine complementary zipper profiles with a bag assembly structure for which a burst of air is the intended means of opening the bag in the absence of some explicit teaching or suggestion to combine such references.

For the reasons set forth above, the allowance of claims 1-20 is respectfully requested.

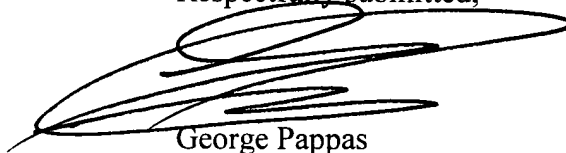
In the event Applicant has overlooked the need for any extension of time or payment of fee, Applicant hereby petitions therefor and authorizes that any charges be made to Deposit

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Account No. 16-0248, Pappas Law Offices. Should the Examiner have any further questions regarding any of the foregoing, the Examiner is respectfully invited to telephone the undersigned at (260) 426-2340.

Applicant respectfully requests that a timely Notice of Allowance be issued in this application.

Respectfully submitted,



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Enclosures:

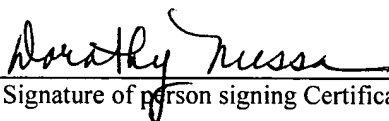
Postcard
Declaration of David C. Huseman under 37
CFR 1.131

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

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